

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 8184 of 2003****For Approval and Signature:****HONOURABLE MR.JUSTICE JAYANT PATEL**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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DR PARAS M PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR RJ OZA for Petitioner(s) : 1,
MR DA DESAI, AGP for Respondent(s) : 1 - 3.
RULE SERVED for Respondent(s) : 1 - 3.
SERVED BY AFFIX.-(R) for Respondent(s) : 4,
MR DC DAVE for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL**Date : 16/02/2006****ORAL JUDGMENT**

1.The short facts of the case appear to be that the petitioner was appointed as Tutor on adhoc basis. Thereafter, she was also appointed on regular basis

after recommendation of the GPSC as per the order dated 07.08.2001. Thereafter, it appears that as the petitioner was qualified, on temporary and adhoc basis the petitioner was posted on the post of Assistant Professor in Anatomy for a period of six months or till the post is filled-up on regular basis or till further orders, whichever was earlier. The petitioner continued over the post. However, on 17.02.2003/28.02.2003, respondent No. 4 came to be promoted to the post of Assistant Professor, Anatomy on regular basis upon the recommendation by the DPC and therefore, as the petitioner was working on adhoc basis till the regularly selected candidate was available, the petitioner came to be reverted vide order dated 28.02.2003 with a view to accommodate respondent No. 4 who was regularly selected. It appears that the petitioner made representation also against the selection of respondent No. 4 and she also claimed that she should have been considered for promotion by DPC. However, as no actions were taken in this regard, the petitioner has approached to this Court by preferring this petition.

2. Two important aspects, which has occurred pending the petition; one is that, on 05.02.2004, the State Government has passed the order whereby the promotion given to respondent No. 4 is cancelled on the ground that respondent No. 4 did not possess the requisite qualification of MS Anatomy on the date when DPC recommended for his promotion on 09.09.2002 since respondent No. 4 was declared passed in the said requisite examination on 27.01.2003 and therefore, as

the respondent No. 4 was not qualified for promotion, the promotion was cancelled.

The another aspect is that on 27.01.2006, the petitioner is regularly promoted to the post of Assistant Professor(Class-I) and a copy of the order dated 27.01.2006 together with the order dated 05.02.2004 for cancelling the promotion of respondent No. 4, both are produced by Mr. Oza, learned counsel appearing for the petitioner during the course of hearing. Therefore, when the matter is finally heard, the promotion given to respondent No.4 stood cancelled in the year 2004 and the petitioner is now promoted in January 2006 on regular basis. It may incidentally be mentioned that respondent No. 4 is also promoted as Assistant Professor (Class-I) together with the petitioner vide order dated 27.01.2006 and other ten Doctors are also promoted simultaneously.

3.Mr. Oza, learned counsel appearing for the petitioner raised the contention that the reversion of the petitioner in the year 2003 was on account of the promotion order in favour of respondent No. 4 which ultimately is found as not proper and consequently, the promotion is cancelled. Therefore, he submitted that the action of the respondent authority to revert the petitioner from the post of Assistant Professor to the post of Tutor would be rendered illegal. He therefore submitted that the petitioner would be entitled for the consequential benefits as if she continued over the post of Assistant Professor.

4. It is true that the promotion order which was passed in favour of the respondent No. 4 is subsequently cancelled. It transpires that the respondent No. 4 was not holding the requisite qualification at the relevant point of time. However, it deserves to be recorded that the petitioner was not promoted on regular basis but was appointed as Assistant Professor purely on temporary and adhoc basis for a period of six months or till the post was filled-up on regular basis or till further orders, whichever was earlier. Therefore, as such, by efflux of time, the petitioner even otherwise also had ceased to continue with the right, even if any, in pursuance of the order dated 07.08.2001, because the words were "whichever is earlier" and not "whichever is later". It may be that after the expiry of the period, the petitioner continued over the post, but thereby, it cannot be read that any right had accrued in favour of the petitioner to continue over the post until regular selection. Whether regular selection was rightly made or wrongly made was a different aspect but one who is holding the post other than by way of regular selection cannot assert that since there were mistakes in regular promotion, he or she ought to have been continued even on temporary and adhoc basis or deemed to be continued and consequently the benefits should be given as if she continued over the post though in reality she has not worked on the post of Assistant Professor after the reversion. Therefore the said contention of Mr. Oza for the petitioner cannot be accepted and hence rejected.

5. Mr. Oza, learned counsel for the petitioner also

submitted that in any case, the petitioner was eligible to be considered for the post of Assistant Professor when respondent No. 4 was considered by the DPC for promotion to the post of Assistant Professor. It is true that the petitioner has made averment in the petition and has also made prayer for such purpose. The perusal of the seniority list, copy whereof is produced at page 45 onwards, shows that respondent No. 4 is appointed as Tutor on 18.08.1998 and the date of appointment on adhoc basis is 21.09.1995 and he was at Sr. No. 62 in the said list. The petitioner is appointed on adhoc basis on 02.05.1998 and on regular basis on 07.06.2001 and her name is shown at Sr. No. 70 in the seniority list. No affidavit in reply has been filed on behalf of the respondent authority and it is not clear from the record on the aspects that upto which date and upto what Sr. No. the other eligible persons were considered by DPC at the time when the meeting dated 09.09.2002 was held at which, together with the other Doctors, the name of the respondent No. 4 was also recommended for promotion to the post of Assistant Professor. It does appear that on 09.09.2002, the petitioner was holding the requisite educational qualification. However, minimum 3 years experience as Tutor in the subject was also one of the desirable requirement. If the date of regular appointment as Tutor is considered as basis, the petitioner would fall outside the zone of consideration. But if the date of appointment on adhoc basis is also to be considered for the purpose of counting experience, the petitioner may fall in the zone of consideration, subject to the availability of

the actual post and also the seniority of other eligible persons who are above the petitioner in the seniority list of the Tutor. Since no affidavit-in-reply is filed on the said aspects, I find that ultimately, it will be for the concerned authority to examine the matter and place the case of the petitioner for consideration in the event if the petitioner was falling in the zone of consideration.

6. Under the above circumstances, the prayer of the petitioner for quashing of the order dated 17/20.02.2003 for granting promotion to respondent No.4 would not survive in view of the subsequent development as recorded hereinabove that the promotion in favour of respondent No. 4 is cancelled. So far as the prayer of the petitioner for consideration of his case is concerned, the respondent authority shall examine the matter in light of the observations made hereinabove and if it is found that the petitioner was falling in the zone of consideration on 09.09.2002, his case will be placed before DPC and the matter shall be finalised accordingly. In the event if it is found by the authority that the petitioner was not falling in the zone of consideration, the petitioner shall be communicated the decision accordingly. The aforesaid exercise shall be completed within a period of four months from the receipt of the order of this Court.

The other prayers in view of the reasons recorded hereinabove, cannot be granted. The petition is partly allowed to the aforesaid extent. Rule partly made absolute. Considering the facts and circumstances,

there shall be no orders as to cost.

(JAYANT PATEL, J.)

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